

CITY OF LINCOLN/LANCASTER COUNTY
CONTRACT AWARD NOTIFICATION
SPECIFICATION NO.05-019
ANNUAL REQUIREMENTS ON PHONE SERVICES FOR
COUNTY YOUTH SERVICES CENTER

DATE: April 12, 2005

CONTRACT PERIOD: May 1,2005 thru April 30,2008

CONTRACTOR: Encartele, Inc.
2615 Harney St.
Omaha NE 68131

PURCHASING DIVISION
K-STREET COMPLEX
440 SOUTH 8TH STREET
LINCOLN, NEBRASKA 68508
(402) 441-7410

Company Representative: Michele Shonkaa
Telephone No.: 402-342-0945
FAX No.: 402-342-1001
E-Mail Address:

THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

Per Contract - dated 4/5/05

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

f/files/sharpurch/awardnotifications/con05019

E.O. #
Dated:

For Posting
Please Return to Purchasing
upon modification 3/30/05

~~Original Contract~~ Contractor
County Clerk
County Youth Services Center

CONTRACT DOCUMENTS

LANCASTER COUNTY

NEBRASKA

**FOR
SPECIFICATION #05-019**

**PHONE SERVICES FOR COUNTY
YOUTH SERVICES CENTER**

Contractor: Encartele, Inc., (Omaha, NE)

LANCASTER COUNTY, NEBRASKA CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this 5th day of April, 2005, by and between Encartele, Inc., 2615 Harney Street, Omaha, NE 68131 hereinafter called "Contractor", and the Lancaster County, Nebraska, hereinafter called the "County".

WITNESS, that:

WHEREAS, the County has caused to be prepared and advertised in accordance with law, specifications, and other Contract Documents describing the services to be provided for **Request for Proposal # 05-019 for Phone Services Lancaster County Youth Services Center**, (hereinafter referred to as the RFP), this document is included by reference as **Exhibit A**; and

WHEREAS, Contractor, in response to such advertisement, desires to and is capable of providing the described necessary services according to the terms and conditions stated in Contractor's response to the RFP, this document is included by reference as **Exhibit B**. and,

WHEREAS, the County, in the manner prescribed by law has prepared specifications (**Exhibit A**), publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, (**Exhibit B**) a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreement herein contained, the Contractor and the County hereby agree as follows:

1. **General Description.** The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents.
2. **Term of the Agreement.** Term of the Agreement shall be three (3) years as thirty-six (36) consecutive months, and shall be on, or about **May 1, 2005** through **April 30, 2008**.
 - 2.1 At the County's request, with the Contractor's consent, the agreement shall be renewable for one (1) additional three (3) year period as thirty-six (36) consecutive months, and shall be **May 1, 2008** through **April 30, 2011**.
3. **Governing Laws.** The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this agreement.

4. Exclusive Rights. Contractor shall have the exclusive right to install and operate an resident telecommunications system in the County's Youth Services Center, unless the Contract is terminated or the Contractor is found to be in breach of the agreement as provided herein. These exclusive rights shall apply to the following location:

Lancaster County Youth Services Center
1200 Radcliff Street
Lincoln, NE 68512

5. Quantity Requirements. The County reserves the right to modify the quantity ordered, and to request current technology on an as-needed-basis with mutual consent with the Contractor.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
7. Compensation. The County shall be charged rates and receive commission for purchased services and equipment at the rates as set in **Exhibit B**.
(Note: These are included in the Exhibit B rates.)

7.1 The County is accepting the Contractor's proposed commission and call rate structure (**see Exhibit B**).

7.1.1 Rates include as follows:

7.1.1.1 40% of the gross revenue or a Guaranteed Annual Minimum Commission (**GMAC**) of **\$3,720.00**.

7.1.1.2 **Local call rate of \$1.70** shall be assessed for all calls generated under the program regardless of the time of day and duration of the call (up to a 15 minute maximum call).

7.1.1.3 Long distance calls shall be billed as per the rates offered on the "Charge per call rate sheet" submitted in **Exhibit B**.

7.2 Unless otherwise stated, commission payments on gross revenues for the calendar month shall be paid monthly by the 30th (or last calendar day) of the following month.

7.3.1 Twenty-five dollars (\$25.00) per day will be assessed by the County for each day past the 30th or last calendar day of the month that the payment has not been received by the County.

8. Payment of Unauthorized Claims. The County may refuse to pay any claim that is not specifically authorized by this contract. Payment of a claim shall not preclude the County from questioning the propriety of the claim. The County reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
9. Payment Upon Termination. Following termination of this Contract, the County shall be paid by the Contractor for commissions generated on services provided in a satisfactory manner prior to such termination, a sum based upon the actual rates stated in **Exhibit B** and accepted herein.
10. Inclusion of All Necessary Fees. The Contractor shall comply with all federal, state, and local laws together with all ordinances and regulations applicable to the services. The Contractor shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under this agreement.
11. Prepaid calling alternatives. It is understood by the County that the Contractor has available several prepaid calling alternatives. These prepaid alternative may be investigated and accepted by the County at a later date and any rates not clarified in this section may be negotiated and possibly added to this agreement in the form of a written Amendment. These alternatives currently include, but are not limited to: Vending system for calling cards, prepaid calling accounts.
12. Payment/Performance Bond. Contractor shall provide with the signed contract an acceptable **performance and payment bond in the amount of \$10,000.00**. Said bond shall be executed by the Contractor and a corporate surety company authorized to transact business in the State of Nebraska. This bond shall be in force during the entire term of the contract including any mutual agreed upon renewal periods.
13. Routine Repair Schedule. Routine maintenance shall be performed on the system between the hours of 8:00 a.m. and 4:00 p.m. Central Time. It is understood by the Contractor that the County does not want the routine maintenance schedule to interfere with the County facilities' visitation times.
14. Status of Employees. Any and all employees of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this agreement, shall not be considered employees of the County and all claims that may or might arise under the Worker's Compensation on behalf of said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of the work or service provided to be rendered herein, shall in no way be the obligation or responsibility of the County. For all purposes the Contractor shall be considered an independent Contractor.
15. Indemnification. Each party shall indemnify and hold harmless, the other party, its members, its officers and employees from and against all claims, damages, losses, and expenses for personal injury or damage to property, including, but not limited to attorney's fees arising out of or resulting from the indemnifying party's negligence in performance of the contract. Each party shall be responsible for the acts of their own members, officers and employees including those caused in whole or part by any negligent act or omission. This shall also mean any subcontractor, or anyone directly or indirectly employed by the Contractor.

16. Warranties. The Contractor, by entering into a contract with the County, warrants and represents that all materials, equipment, and service delivered to the County pursuant to the contract conforms to all of the specifications contained or referred to herein. The Contractor further guarantees to replace all materials, equipment, software, or service that may be rejected by the County due to defective materials or workmanship for a minimum of one year following acceptance. Failure or neglect of the County to require compliance with any term or condition of the contract or specifications shall not be deemed a waiver of such term or condition.
17. Breach of Warranties. In the event of any breach of Contractor's warranties and/or covenants contained in this contract, or if, for any other reason, except only the fault of the County, the hardware, software or other services does not operate in accordance with the specifications provided in this contract and has not adjusted, or cannot adjust the same within fifteen (15) days after notice to Contractor, County shall have the right, at its option, to cancel this contract and to receive the return of all sums theretofore due to the County by the Contractor, in addition to such other damages to which the County may be legally entitled. The Contractor's obligations under this agreement are in lieu of all other warranties expressed or implied.
18. Termination of the Contract. Termination of the Contract may occur for the following reasons and conditions:
 - 18.1 Termination by the County for Cause: The County may terminate the Contract if the Contractor:
 - 18.1.1 Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide complete Resident Phone Services as requested.
 - 18.1.2 Fails to make payments to the County for commissions or is continuously late with commission payments.
 - 18.1.3 Fails to make payments to Suppliers or Subcontractors for materials and/or labor in accordance with the respective agreements between the Contractor and Subcontractors.
 - 18.1.4 Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction over the Contract.
 - 18.1.5 If the Contractor's or Subcontractor's employees commit a breach of facility security rules.
 - 18.1.6 Otherwise commits a substantial breach of any provision of the Contract Document.
 - 18.2 Termination by Either Party for Convenience: *By mutual agreement both parties of the contract agreement*, upon receipt and acceptance of not less than a ninety (90) calendar days written notice, the contract may be terminated on an agreed upon date, prior to the end of the contract period, without penalty to either party.
 - 18.2.2 Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the County shall pay Contractor in accordance with this section.

- 18.2.3 The provisions of the Contract which by their nature survive final acceptance of the work, shall remain in full force and effect after such termination to the extent provided in such provisions.
 - 18.2.4 Upon receipt of any such notice of termination, the Contractor shall, unless the Notice directs otherwise, immediately:
 - 18.2.4.1 Discontinue the work to the extent specified by the County.
 - 18.2.4.2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of that portion of the work, if any, the County has directed not to be discontinued.
 - 18.2.4.3 Promptly make every reasonable effort to procure cancellation upon satisfactory terms as determined by the County of all orders and subcontracts not related to that portion of the work, if any, the County has directed not to be discontinued.
 - 18.2.4.4 Do only such other activity as may be necessary to preserve and protect work already in progress and to protect materials, supplies and equipment on the site or in transit thereto.
 - 18.2.5 Upon such termination, the obligations of the Contract shall continue as to options of the work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.
 - 18.2.6 Upon termination, the Contractor shall pay the County the full commission amount due as a result of all phone transactions properly completed by county Residents utilizing the Contractor's equipment to the date of termination and not previously paid to the County.
- 18.3 Non-appropriation of Funds: The County may terminate this Contract upon thirty (30) calendar days' written notice to the Contractor if the County's governing body(s) fail to appropriate monies for the purpose of providing Resident services covered under the contract agreement.
- 18.4 Termination for Bankruptcy or Insolvency: In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee for the benefit of creditors, of the property of the Contractor, the County may cancel this contract or affirm the contract and hold the Contractor responsible for damages.
19. Contract Assignment. The contract established as a result of this RFP process shall not be transferred to/or assigned without prior written consent of the County Board of Commissioners.
20. Notices. All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt, or when mailed by first class registered or certified mail, postage prepaid, addressed to the County and Contractor at their respective addresses designated below, or at such other address as the County or Contractor, as the case may be, shall have furnished in writing to the other.

21. Insurance. The Contractor shall maintain during the life of this contract the types and amounts of insurance as specified in the attached "Insurance Requirements for County Contracts (**Exhibit C**)". The County shall be named as additional insured with regard to the performance of the contract services.

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the County hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the contractor and the County do hereby execute this contract.

EXECUTION BY LANCASTER COUNTY, NEBRASKA

CONTRACT APPROVED AS TO FORM:

Kristy Mundt
Deputy Lancaster County Attorney

COUNTY OF LANCASTER, NEBRASKA

Larry Hudson 4/15/05
Chairperson, Board of Commissioners

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Nancy H. Clausen (SEAL)
Secretary

Encartele, Inc., Inc.
Name of Corporation

2615 Harney Street, Omaha, NE 68131
Address

By: May M. Zgal
Duly Authorized Official
President
Legal Title of Official